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Attorneys for Plaintiff,  
TINA RICHARDSON  
as successor-in-interest  
to Decedent Caleb Slay

**UNITED STATES DISTRICT COURT**  
**FOR THE WESTERN DISTRICT OF MISSOURI**  
**SOUTHERN DIVISION**

1 TINA RICHARDSON, individually and as  
2 successor-in-interest to Decedent Caleb Slay,  
3 Plaintiff,

4 vs.

5 UNITED STATES OF AMERICA;  
6 ANTHONY GASPERONI, individually and  
7 in his official capacity as an agent for the  
8 United States Drug Enforcement  
9 Administration; JOHN STUART,  
10 individually and in his official capacity as an  
11 agent for the United States Drug  
12 Enforcement Administration; DOES 1-20,  
13 inclusive, individually and in their official  
14 capacity as agents for the United States Drug  
15 Enforcement Administration; CITY OF  
16 SPRINGFIELD, a municipal entity; C.  
17 NUCCIO, individually and in his official  
18 capacity as sergeant for the Springfield  
19 Police Department; and DOES 21-40,  
20 inclusive, individually and in their official  
21 capacity as police officers for the Springfield  
22 Police Department,

23 Defendants.

CASE NO.: 6:23-cv-03337-RK

(Honorable District Judge Roseann A.  
Ketchmark)

**PLAINTIFF'S MOTION TO MODIFY THE  
COURT'S RULE 16 SCHEDULING  
ORDER AND REQUEST TO CONTINUE  
RULE 26 DEADLINES**

Complaint Filed: October 31, 2023

**TO THE HONORABLE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF  
RECORD:**

21 PLEASE TAKE NOTICE that as soon as the matter can be heard, in the courtroom of the  
22 Honorable District Judge Roseann A. Ketchmark, situated in the United States Courthouse,  
23 Western District of Missouri, Southern Division, Plaintiff, Tina Richardson, by and through her  
24 counsel of record, will make a motion to the Court requesting an Order to Modify the Court's Rule  
25 16 Scheduling Order of December 8, 2023 and Continue the Rule 26 Deadlines. Defendant United  
26 States moved for an extension of the Rule 26(f) Conference with its Notice of Filing on January 4,  
27 2024. Defendants City of Springfield and C. Nuccio do not oppose the present Motion.  
28

1 This Motion shall be based on Federal Rules of Civil Procedure § 16(b), MOWD Local  
2 Rules 16.1, 16.3, and 26.1, this Court's Rule 16 Order (Dkt. No. 18), and is predicated on good  
3 cause, the interests of justice, and because granting the Order to modify the Court's Scheduling  
4 Order and continuing the Rule 26 Deadlines will not unduly prejudice the Defendants in this action.  
5 This motion is further based upon this Notice; the attached Memorandum of Points and  
6 Authorities; upon the records and files in this action; and upon such further evidence and argument  
7 as may be presented prior to or at the time of hearing the motion.  
9

10  
11 Dated: January 22, 2024

**BURRIS NISENBAUM CURRY & LACY**

12  
13 /s/ Julia N. Quesada

14 John L. Burris  
15 DeWitt M. Lacy  
16 Julia N. Quesada  
17 Lena P. Andrews

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19 Attorneys for Plaintiff,  
20 Tina Richardson  
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1 Nuccio (Dkt. No. 16). As such, all parties to the litigation are not able to meaningfully participate  
2 in a Rule 26(f) Conference or propose a scheduling order for this litigation.

3 Plaintiff contends there is good cause to continue the Rule 26(f) Deadlines because all  
4 parties have yet to appear in the action, Defendants United States of America also request an  
5 extension, Defendants City of Springfield and C. Nuccio do not oppose a continuance of the Rule  
6 26(f) deadlines, Plaintiff has demonstrated diligence to meet this Court's Rule 16 Order deadlines,  
7 and there is no undue prejudice to Defendants. Based on the reasons stated herein, Plaintiff  
8 respectfully requests this Court to issue an Order Modifying the Scheduling Order and Continuing  
9 the Deadline to complete Rule 26(f) requirements.  
10

### 11 **STATEMENT OF FACTS**

12 The facts giving rise to this action are set forth in Plaintiff's Complaint filed with this Court  
13 on October 31, 2023. (See generally Dkt. No. 1) (See also Declaration of Julia N. Quesada,  
14 hereinafter "Quesada Decl.", ¶ 2). This Court issued its Rule 16 Order on December 8, 2023. (Dkt.  
15 No. 18). In the Rule 16 Order, this Court set the following deadlines: Rule 26(f) Conference by  
16 January 7, 2024; Deadline to File Designation of Outside Mediator - January 19, 2024; Deadline  
17 to File Proposed Scheduling Order – January 21, 2024; and Deadline to Complete Mediation –  
18 March 22, 2024. (Dkt. No. 18). For the reasons stated below, the parties have not held their Rule  
19 26(f) Conference.

20 On December 7, 2023, Defendants City of Springfield and C. Nuccio filed a Motion to  
21 Dismiss the Complaint as to Plaintiff's claims against the City Defendants. (Dkt. Nos. 16, 17).  
22 Plaintiff filed her Suggestions in Opposition to City Defendants' Motion to Dismiss on December  
23 21, 2023. (Dkt. No. 19). Defendants City of Springfield and C. Nuccio filed their Reply  
24 Suggestions to their Motion to Dismiss on January 3, 2024. (Dkt. No. 20).

25 On January 2, 2024, Plaintiff's Counsel received a letter from the Assistant United States  
26 Attorney on behalf of the United States of America (hereinafter "United States"), notifying that  
27 the United States had not been properly served under Federal Rule of Civil Procedure 4(i). See  
28 Fed. R. Civ. Proc. 4(i)(1)(B) (See also Quesada Decl. ¶ 3). The Assistant United States Attorney

1 further indicated that the federal agents, Anthony Gasperoni and John Stuart, had likewise not been  
2 properly served under Federal Rule of Civil Procedure 4(i). *Id.* Thereafter the Assistant United  
3 States Attorney filed a Notice of Filing regarding Lack of Proper Service and Motion to Extend  
4 the Rule(f) Conference on behalf of the United States on January 4, 2024. (Dkt. No. 21).

5 In order to cure the defect with service, Plaintiff submitted a request for issuance of  
6 summons as to the United States Attorney General for Defendants United States, Anthony  
7 Gasperoni, and John Stuart. The summonses were issued on January 11, 2024. The United States  
8 Attorney General was served on January 15, 2024. Plaintiff filed the Certificate(s) of Service of  
9 Complaint returned executed as to the United States Attorney General for Defendants United  
10 States, Anthony Gasperoni, and John Stuart on January 17, 2024. (Dkt. Nos. 22, 23, 24).

11 On January 12, 2024, Counsel for Defendants Anthony Gasperoni and John Stuart  
12 informed Plaintiff's Counsel via email that he was authorized to accept service on the federal  
13 agents' behalf. (Quesada Decl. ¶ 4). On January 15, 2024, Plaintiff's Counsel personally served  
14 Defendants Anthony Gasperoni and John Stuart via email with the summons, complaint, and other  
15 case-initiating documents, and filed the Certificate of Service of Complaint Returned Executed on  
16 January 17, 2024. (Dkt. Nos. 23, 24) (Quesada Decl. ¶ 4).

17 Plaintiff's Counsel notified Counsel for Defendants City of Springfield and C. Nuccio of  
18 the present Motion to Modify the Rule 16 Order and Continue the Rule 26(f) deadlines on January  
19 17, 2024. (Quesada Decl. ¶ 5). City Defendants' Counsel responded on January 18, 2024, that City  
20 Defendants do not oppose the present Motion. *Id.*

21 In light the issues around service of the United States, Anthony Gasperoni, and John Stuart,  
22 the Notice of Filing regarding Lack of Proper Service and Motion to Extend the Rule 26(f)  
23 Conference (Dkt. No. 21), the City Defendants' pending Motion to Dismiss (Dkt. No. 16) and non-  
24 opposition to the present Motion, Plaintiff maintains there is good cause to continue the Rule 26(f)  
25 deadlines and the prejudice to the Defendants, if any, is *de minimus*. Accordingly, Plaintiff hereby  
26 moves this Court for an Order to Modify the Rule 16 Order and Continue the Rule 26(f) Deadlines.  
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**ARGUMENT**

**I. STANDARD OF REVIEW**

It is within the discretion of the district court whether to grant the motion to modify a case management order. *In re Milk Prods. Antitrust Litig.*, 195 F.3d 430, 437 (8th Cir.1999), cert. denied sub nom. *Rainy Lake One Stop, Inc. v. Marigold Foods, Inc.*, 529 U.S. 1038, 120 S.Ct. 1534, 146 L.Ed.2d 348 (2000). Federal Rule of Civil Procedure 16(b) specifies that a case management order “may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. Proc. 16(b)(4). Thus, Plaintiff, as the moving party here, must first make the requisite showing of good cause. *Bradford v. DANA Corp.*, 249 F.3d 807, 809 (8th Cir.2001).

“The primary measure of Rule 16's ‘good cause’ standard is the moving party's diligence in attempting to meet the case management order's requirements.” *Bradford v. DANA Corp.*, 249 F.3d 807, 809 (8th Cir.2001), citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir.1992). “[T]he existence or degree of prejudice to the party opposing the modification’ and other factors may also affect the decision.” *Id.*

**II. THERE IS GOOD CAUSE TO MODIFY THE RULE 16 ORDER AND CONTINUE THE RULE 26(f) DEADLINES**

This Court’s Rule 16 Order provides in part, that, “[a]ll motions for extension of time must state: (a) the date when the action is/was due; (b) the number and length of the previous extension(s); (c) the cause for the requested extension; and (d) whether or not the requested extension is opposed (agreement by counsel of a requested extension is not binding on the Court). (Dkt. No. 18 at ¶ 5). Plaintiff maintains that good cause exists to warrant modification to the Rule 16 Order and continue the Rule 26(f) deadlines.

**A. The Rule 26(f) Conference Deadlines Passed**

The Court’s Rule 16 Order (Dkt. No. 18) set the Rule 26(f) deadlines for this action, which the parties have not been able to complete for the reasons stated herein. The deadline for the parties to complete the Rule 26(f) Conference was on January 7, 2024, the deadline for the parties to file a designation of mediator was on January 19, 2024, and the deadline for the parties to file a

1 proposed scheduling order was on January 21, 2024. The only deadline in this Court's Rule 16  
2 Order that has not yet lapsed is the deadline for mediation which is on March 22, 2024.

3 Due to the issues with service on the federal defendants, Counsel for the United States, was  
4 not known to Plaintiff until January 2, 2024. Likewise, Counsel for Anthony Gasperoni and John  
5 Stuart was likewise unknown to Plaintiff until January 12, 2024. Following the Notice of Filing  
6 regarding lack of proper service on the United States, Plaintiff focused her efforts on curing the  
7 defects with service on the federal defendants to ensure all parties were properly and timely served  
8 in accordance with Federal Rules of Civil Procedure. Once counsel for all parties had been  
9 realized, the deadlines for completing Rule 26(f) requirements had already passed. Moreover,  
10 Defendant United States had already filed its Notice of Filing and Motion for an extension of the  
11 Rule 26(f) conference. Plaintiff thereafter contacted Counsel for the City Defendants to inquire  
12 about continuing the Rule 26(f) deadlines, to which City Defendants consented, and which is the  
13 Motion presently before the Court.  
14

15 **B. This is the First Requested Extension**

16 The is Plaintiff's first request for an extension in this action. The United States previously  
17 moved for an Order extending the deadline for the parties to complete the Rule 26(f) Conference  
18 concurrently with the Notice of Filing regarding lack of proper service on January 4, 2024. (Dkt.  
19 No. 21). Other than the Motion to Extend the Rule 26(f) Conference Deadline filed by the United  
20 States and Plaintiff's Motion now, no other extensions have been requested in this litigation.

21 **C. There is Good Cause for an Extension**

22 Plaintiff contends that good cause exists to warrant a continuance of the Rule 26(f)  
23 deadlines in the present matter. Due to the recent notice of lack of proper service on the United  
24 States, Anthony Gasperoni, and John Stuart, Plaintiff had to request issuance of summons for the  
25 United States Attorney General and then effect proper service of the summons, complaint, and  
26 other case-initiating documents in accordance with Federal Rule of Civil Procedure 4(i). All parties  
27 have been properly served with the summons and complaint as of January 15, 2024.  
28 Notwithstanding the parties all being properly served, only the City Defendants and United States



1 have entered their first appearance in the litigation. Moreover, only the City Defendants have filed  
2 a responsive pleading to Plaintiff's Complaint. Defendant United States has entered an appearance,  
3 but only for the purpose of filing a Notice of Filing regarding the lack of proper service. Defendant  
4 United States has not filed a responsive pleading yet. The federal agent defendants, Anthony  
5 Gasperoni and John Stuart, have yet to appear at all in the litigation. As such, the parties have not  
6 been in a position to engage meaningfully in a Rule 26(f) Conference and discuss a proposed  
7 scheduling order. Thus, there is good cause to warrant an extension of the Rule 26(f) deadlines.

9 **D. The Requested Extension is Unopposed**

10 As stated supra, the United States filed a Motion to Extend the Rule 26(f) Conference  
11 Deadline concurrently with its Notice of Filing on January 4, 2024. (Dkt. No. 21). Plaintiff emailed  
12 Counsel for Defendants City of Springfield and C. Nuccio on January 17, 2024 to request their  
13 consent to a motion to continue the Rule 26(f) deadlines in light of the issues with service on the  
14 federal defendants and the City Defendants' pending Motion to Dismiss (Dkt. No. 16). Counsel  
15 for City Defendants informed Plaintiff on January 18, 2024 that City Defendants do not oppose  
16 the present Motion to Modify the Scheduling Order and Continue the Rule 26(f) Deadlines.  
17 Defendants Anthony Gasperoni and John Stuart have yet to appear in this action and therefore  
18 consent to the present motion was neither sought nor required. Accordingly, all parties who have  
19 entered their appearance in this action have consented to the present Motion and do not oppose  
20 Plaintiff's request for an Order continuing the Rule 26(f) Deadlines.

21 **III. THERE IS NO UNDUE PREJUDICE TO THE DEFENDANTS**

22 The parties who have appeared in this action agree that continuing the Rule 26(f) deadlines  
23 is justified under the present circumstances. Namely, there are two defendants, Anthony Gasperoni  
24 and John Stuart, who have yet to appear the action, Defendant United States has not filed a  
25 responsive pleading yet, and a motion to dismiss filed by Defendants City of Springfield and C.  
26 Nuccio is currently pending. In order to engage in a meaningful Rule 26(f) Conference, all parties  
27 to the litigation should be present and participate. With the pleadings not set and the necessary  
28 parties having not all appeared, any Rule 26(f) Conference would be premature and any dates

1 proposed in a scheduling order would likely need to be modified. Continuing the deadlines for  
2 completing the Rule 26(f) requirements until after the pleadings are finalized and all parties have  
3 entered appearances would allow all parties to meaningfully participate and would prevent the  
4 need for the parties to seek additional modifications to the scheduling and requests for extensions.  
5 All parties who entered an appearance agree that a continuance of the Rule 26(f) deadlines would  
6 be beneficial under the present circumstances. As such, there is no undue prejudice to the  
7 Defendants; any prejudice is *de minimus*.

9 **CONCLUSION**

10 Based on the foregoing, Plaintiff respectfully requests that this Court issue an Order to  
11 Modify the Rule 16 Order and Continue the Rule 26(f) Conference deadlines.

12 Respectfully submitted,

13 Dated: January 22, 2024

**BURRIS NISENBAUM CURRY & LACY**

15 By: /s/ Julia N. Quesada

16 JOHN L. BURRIS  
17 DeWITT M. LACY  
18 JULIA N. QUESADA  
LENA P. ANDREWS

19 Attorneys for Plaintiff,  
20 Tina Richardson

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**CERTIFICATE OF SERVICE**

I, Julia N. Quesada, hereby certify that the foregoing was filed through the CM/ECF system on January 22, 2024, which provided notice to all attorneys of record.

/s/ Julia N. Quesada  
Julia N. Quesada